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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

IN THE MATTER OF:

Chemical Commodities Inc. Site
Olathe, Johnson County, Kansas

ADMINISTRATIVE ORDER ON CONSENT
FOR REMOVAL ACTION

U.S. EPA Region 7
Docket No. CERCLA-07-2003-0036

Burlington Northern Santa Fe Railway
Company

Respondent.

Proceeding Under Sections 104, 106(a),
107 and 122 of the Comprehensive
Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. §§ 9604, 9606(a),
9607 and 9622

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and the Burlington Northern Santa Fe Railway Company ("Respondent"). This Order provides for the performance of a removal action by Respondent and the reimbursement of response costs incurred by the United States in overseeing Respondent's performance of the Work required by this Order at the Chemical Commodities Inc. Site, Olathe, Johnson County, Kansas ("the Site").

2. This Order is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA"), and delegated to the Administrator of EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to EPA Regional Administrators by EPA Delegation No. 14-14-C. The Regional Administrator, EPA, Region 7, has further delegated this authority to the Director of the Superfund Division, EPA, Region 7, by EPA Delegation NO. R7-14-14-C.

3. EPA has notified the State of Kansas of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. The Respondent agrees to undertake all actions required by the terms and conditions of this Order. In any action by the United States to enforce the terms of this Order, the Respondent consents to and agrees not to contest the authority or jurisdiction of the Regional Administrator to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

5. By signing this Order and taking the actions required of them under this Order, the Respondent does not necessarily agree with EPA's Finding of Fact and Conclusions of Law. Furthermore, the participation of the Respondent in this Order shall not be considered an admission of liability and is not admissible in evidence against the Respondent except in any judicial or administrative proceeding by the United States to enforce this Order or a judgment relating to it.

II. PARTIES BOUND

6. This Order applies to and is binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Order.

7. Respondent shall ensure that its contractors and subcontractors retained to perform Work under this Order, and that representatives designated to act on Respondent's behalf with respect to this Order, receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

III. DEFINITIONS

8. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Order or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "Action Memorandum" shall mean the EPA Action Memorandum, and all attachments thereto, which is attached to this Order as Appendix A.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

c. "Day" shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

d. "Effective Date" shall be the effective date of this Order as provided in Section XXXI.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

f. "KDHE" shall mean the Kansas Department of Health and Environment and any successor departments or agencies of the State.

g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

i. "Order" shall mean this Administrative Order on Consent and all appendices attached hereto (listed in Section XXX). In the event of conflict between this Order and any appendix, this Order shall control.

j. "Oversight Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 32 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 42 (emergency response), and Paragraph 69 (work takeover).

k. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.

l. "Parties" shall mean EPA and Respondent.

m. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

n. "Respondent" shall mean the Burlington Northern Santa Fe Railway Company.

o. "Section" shall mean a portion of this Order identified by a Roman numeral.

p. "Site" shall mean the property owned by Chemical Commodities Inc. located at 300-320 South Blake Street in Olathe, Johnson County, Kansas, and adjacent property where hazardous substances have come to be located as a result of CCI's business activities.

q. "State" shall mean the State of Kansas.

r. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 2903(27); and 4) any "hazardous waste" under K.S.A. 65.3430.

s. "Work" shall mean all activities Respondent are required to perform under this Order.

IV. FINDINGS OF FACT

9. During the period from 1951 until 1989, Chemical Commodities, Inc. (CCI) operated as a broker of surplus and used chemicals. The Site was one of several chemical storage facilities in Kansas and Missouri owned and/or operated by CCI. During the period from 1968 until 1992, CCI leased property near the Site from the Respondent for storage of chemicals.

10. CCI buried three storage tanks at the Site which were used for storage of trichloroethylene (TCE) and tetrachloroethylene (PCE). The tanks were buried

outside the boundaries of the leased property but otherwise within Respondent's right-of-way. In May, 1985, EPA issued an administrative order to CCI, pursuant to Sections 3013 and 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6934 and 6973, requiring testing of the buried tanks for leaks and the removal of any leaking tanks. The results of the tests showed that the tanks had leaked, and were leaking, their contents into the subsurface soil and ground water at the Site. Under EPA oversight, CCI completed removal of the tanks in August 1986.

11. The EPA conducted an investigation of the Site in February 1989 and documented the release and the threat of release of hazardous substances, including, TCE, PCE, dichloro-benzene, acetone and carbon tetrachloride, at the Site. EPA initiated a removal action at the Site in July 1989. During the course of the removal action, hazardous substances were disposed of off-site and contaminated soil was either stockpiled on-site for later disposal or taken off-site for disposal during the removal action. A groundwater interceptor trench and treatment system was installed to capture and treat groundwater containing high concentrations of chlorinated solvents, primarily TCE and PCE, some of which had leaked from underground storage tanks at the Site.

12. The Site was listed on the National Priorities List in June 1994.

13. The volume of water collected by the interceptor trench has diminished over the years and the results of recent analysis of water collected from the interceptor trench indicates that the trench is not capturing the most contaminated groundwater as it was originally intended to do.

14. On December 18, 2002, EPA approved an Action Memorandum authorizing the removal and off-site disposal of stockpiled contaminated soil remaining from a previous Superfund response action at the Site and demolition of the remaining building on the property. On April 16, 2003, EPA amended the Action Memorandum authorizing additional funds for the closure of the interceptor trench. Removal of the stockpiled soil and demolition of the building was completed by EPA in June 2003.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

15. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

a. The Chemical Commodities Inc. Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. The Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Respondent is an "owner" of the Site within the meaning of Section 107(a)(1) and (a)(2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (a)(2).

e. The conditions described in Paragraph 11 of the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The removal action required by this Order is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Order, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Order, including, but not limited to, all attachments to this Order and all documents incorporated by reference into this Order.

**VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR,
AND ON-SCENE COORDINATOR**

16. Respondent shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within 10 days of the Effective Date. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 10 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 10 days of EPA's disapproval. Respondent shall demonstrate the proposed contractor's compliance with ANSI/ASQC E-4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B0-1/002), or equivalent documentation as required by EPA.

17. Within 10 days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Order and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 10 days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by all Respondent.

18. EPA has designated Mary Peterson of the Iowa/Nebraska Remedial Branch, as its Project Manager ("PM") and Paul Doherty as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Order, Respondent shall direct all submissions required by this Order to the PM at 901 North 5th Street, Kansas City, Kansas 66101.

19. EPA and Respondent shall have the right, subject to Paragraph 17, to change its respective designated PM, OSC or Project Coordinator. Respondent shall notify EPA 10 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

20. Respondent shall perform, at a minimum, all actions necessary to implement the closure of the interceptor trench by injecting grout into the gravel layer, as described in the Action Memorandum. Respondent shall not be responsible for maintenance or inspections of the security fence which surrounds the property owned by CCI.

21. Work Plan and Implementation.

a. Within 30 days after the Effective Date, Respondent shall submit to EPA for approval a draft Work Plan for performing the removal action generally described in Paragraph 20 above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Order.

b. The work plan shall include, but not be limited to the following:

(1) Health and Safety Plan

Within 45 days after the Effective Date, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992) and shall include railroad safety rules. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

(2) Project Schedule

The schedule shall contain the anticipated time frames for conducting all of the activities in the Work Plan. In order for Respondent to close the interceptor trench, Respondent will be provided access to the manholes. Closure of the trench will be scheduled to begin immediately after the trench is pumped out. The below-ground equipment shall be abandoned in place and the trench system closed.

c. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, shall submit a revised draft Work Plan within 14 days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Order.

d. Respondent shall not commence any Work except in conformance with the terms of this Order. Respondent shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 21(c).

22. In accordance with the Work Plan schedule, or as otherwise directed by EPA, Respondent shall submit a proposal for post-removal site control consistent with Section 300.415(l) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, Respondent shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

23. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Order every 30th day after the date of receipt of EPA's approval of the Work Plan until termination of this Order, unless otherwise directed in writing by the PM. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

24. Within 45 days after completion of all Work required by this Order, Respondent shall submit for EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

25. Respondent shall submit four (4) copies of all plans, reports or other submissions required by this Order, or any approved work plan. Upon request by EPA, Respondent shall submit such documents in electronic form.

26. Respondent shall, prior to any off-site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the OSC. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards. Respondent shall include in the written notification the name and location of the facility to which the Waste Material is to be shipped; the type and quantity of the Waste Material to be shipped; the expected schedule for the shipment of the Waste Material; and the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state. The identity of the receiving

facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by this Paragraph as soon as practicable after the award of the contract and before the Waste Material is actually shipped. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence. Any waste materials generated during trench abandonment and closure activities shall be drummed, labeled, and stored on-site for subsequent waste characterization. It is anticipated that waste materials may include some residual water wastes created during abandonment activities and/or solid wastes associated with worker personal protective equipment (PPE). Drummed waters, including decon waters, will be sampled for analysis for waste disposition. PPE waste will be disposed of as non-hazardous solid waste materials. No soil waste and/or hazardous water wastes are anticipated. Upon waste characterization of any water wastes, the contractor shall dispose of the materials at a certified facility approved by the EPA.

IX. SITE ACCESS

27. On November 15, 1994, EPA and CCI entered into an agreement providing EPA and its authorized representatives with access to the CCI property. Commencing on the Effective Date of this Order, pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and Section 400 (d)(3) of the NCP, as provided for in the November 15, 1994 agreement for access between EPA and CCI, EPA designates the Respondent and its contractor(s) as EPA's duly authorized representatives solely for the purpose of access to the CCI property to perform the Work required under this Order. The United States does not assume any liability by virtue of this designation of Respondent and its contractor(s) as EPA's duly authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and Section 400 (d)(3) of the NCP.

28. Notwithstanding any provision of this Order, EPA retains all of its access authorities and rights including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

29. Respondent shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

30. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

31. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

32. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

33. Until 5 years after Respondent's receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after Respondent's receipt of EPA's notification pursuant to Section XXVIII (Notice of Completion of Work), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

34. At the conclusion of this document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondent shall deliver any such records or documents to EPA. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

35. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information

(other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

36. Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

37. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the Regional Duty Officer, Emergency Response and Removal Branch, EPA Region VII, 913-551-0991 of the incident or Site conditions. In the event that Respondent fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

38. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC at 913-551-0991 and the National

Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

39. The OSC shall be responsible for overseeing Respondent's implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Order, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XV. PAYMENT OF OVERSIGHT COSTS

40. Respondent shall pay EPA all Oversight Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment that includes an Itemized Cost Summary, which includes direct and indirect costs incurred by EPA and its contractors. Respondent shall make all payments within 30 days of receipt of each bill requiring payment. Respondent shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party(ies) making payment and EPA Site/Spill ID number 07L3. Respondent shall send the check(s) to:

Mellon Bank
Attn: Superfund Accounting
EPA Region VII
(Comptroller Branch)
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

At the time of payment, Respondent shall send notice that payment has been made to:

Joyce Hughes
Accountant
Resources & Financial Management Branch
Cost Accounting Unit
EPA Region VII
901 North 5th Street
Kansas City, Kansas 66101

Barbara Peterson
Assistant Regional Counsel
EPA Region VII
Office of Regional Counsel
901 North 5th Street
Kansas City, Kansas 66101

The total amount to be paid by Respondent pursuant to this Paragraph shall be deposited in the Chemical Commodities Inc. Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or shall be transferred by EPA to the EPA Hazardous Substance Superfund.

41. In the event that the payments for Oversight Costs are not made within 30 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Oversight Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

42. Respondent may dispute all or part of a bill for Oversight Costs submitted under this Order, if Respondent allege that EPA has made an accounting error, or if Respondent allege that a cost item is inconsistent with the NCP. If any dispute over

costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondent shall pay the full amount of the uncontested costs to EPA as specified in Paragraph 45 on or before the due date. Within the same time period, Respondent shall pay the full amount of the contested costs into an interest-bearing escrow account. Respondent shall simultaneously transmit a copy of both checks to the persons listed in Paragraph 40 above. Respondent shall ensure that the prevailing party or parties in the dispute shall receive the amount upon which they prevailed from the escrow funds plus interest within 10 days after the dispute is resolved.

XVI. DISPUTE RESOLUTION

43. Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Order. The Parties shall attempt to resolve any disagreements concerning this Order expeditiously and informally.

44. If Respondent objects to any EPA action taken pursuant to this Order, including billings for Oversight Costs, it shall notify EPA in writing of its objection(s) within 5 days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have 10 days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

45. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Order. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the division director level will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Order. Respondent's obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

46. Respondent agrees to perform all requirements of this Order within the time limits established under this Order, unless the performance is delayed by a *force majeure*. For purposes of this Order, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Order despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work, or increased cost of performance.

47. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within 48 hours of when Respondent first knew that the event might cause a delay. Within five (5) days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

48. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Order that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

49. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 50 and 51 for failure to comply with the requirements of this Order specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by Respondent shall include completion of the activities under this Order or any work plan or other plan approved under this Order identified below in accordance with all applicable requirements of law, this Order, and any plans or other documents approved by EPA pursuant to this Order and within the specified time schedules established by and approved under this Order.

50. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 50(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st through 14th day
\$500	15th through 30th day
\$1000	31st day and beyond

b. Compliance Milestones

(1) Failure to submit a draft Work Plan for EPA review and approval within 30 days of the Effective Date of this Order.

(2) Failure to implement the Work Plan as approved by EPA.

51. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$100	1st through 14th day
\$150	15th through 30th day
\$ 250	31st day and beyond

52. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 62 of Section XX, Respondent shall be liable for a stipulated penalty in the amount of \$100,000.

53. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and 2) with respect to a decision by the EPA Management Official at the division director level or higher, under Paragraph 45 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

54. Following EPA's determination that Respondent has failed to comply with a requirement of this Order, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

55. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to Mellon Bank, Attn: Superfund Accounting, Environmental Protection Agency, Region VII, (Comptroller Branch), P.O. Box 360748, Pittsburgh, PA 15251, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 07L3, the EPA Docket Number CERCLA-07-2003-0036, and the name and address of the party(ies) making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 40.

56. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Order.

57. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

58. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 54. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Order or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX, Paragraph 63. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XIX. COVENANTS

59. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Order, and except as otherwise specifically provided in this Order, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work and recovery of Oversight Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Order, including, but not limited to, payment of Oversight Costs pursuant to Section XV. This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

60. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

61. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Order is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Order;
- b. liability for costs not included within the definition of Oversight Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

62. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in its performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Oversight Costs that Respondent shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Order, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENT

63. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Oversight Costs, or this Order, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Kansas Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

64. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

65. The Parties hereto agree that the Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by

Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Order. The "matters addressed" in this Order are the Work and Oversight Costs.

66. Nothing in this Order precludes the Parties from asserting claims, causes of action or demands against any persons not parties to this Order, including claims for indemnification, contribution or cost recovery.

67. In any subsequent administrative or judicial proceeding initiated by the United States on behalf of EPA for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defense based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the covenants in Section XIX of this Order.

XXIII. OTHER CLAIMS

68. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

69. Except as expressly provided in Section XIX (Covenants), nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

70. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIV. INDEMNIFICATION

71. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Order. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Order. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Order. Neither Respondent nor any such contractor shall be considered an agent of the United States.

72. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

73. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. INSURANCE

74. At least 7 days prior to commencing any on-site work under this Order, Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of one

million dollars (\$1,000,000), combined single limit. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Order, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Order. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. MODIFICATIONS

75. The PM or OSC may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the PM's or OSC's oral direction. Any other requirements of this Order may be modified in writing by mutual agreement of the Parties.

76. If Respondent seeks permission to deviate from any approved work plan or schedule Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the PM or OSC pursuant to Paragraph 75.

77. No informal advice, guidance, suggestion, or comment by the PM or OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

XXVII. ADDITIONAL REMOVAL ACTION

78. If EPA determines that additional removal actions not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify Respondent of that determination. Unless otherwise stated by EPA,

within 30 days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondent shall submit for approval by EPA a Work Plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Order. Upon EPA's approval of the plan pursuant to Section VIII, Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the PM's or OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVI (Modifications).

XXVIII. NOTICE OF COMPLETION OF WORK

79. When EPA determines, after EPA's review of the Final Report, that the Work required under this Order has been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including post-removal site controls, payment of Oversight Costs, or record retention, EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Order, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Order.

XXIX. SEVERABILITY/INTEGRATION/APPENDICES

80. If a court issues an order that invalidates any provision of this Order or finds that Respondent have sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

81. This Order and Appendix A, Action Memorandum (Request for Removal Action at Chemical Commodities Site, Olathe, Johnson County, Kansas) constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The parties acknowledge that

there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Order.

XXX. EFFECTIVE DATE

82. This Order shall be effective five (5) days after the Order is signed by the Regional Administrator or his/her delegatee .

It is so ORDERED and Agreed this 28 ^{October,}~~September,~~ 2003.

Andrea Jaska, for
Cecilia Tapia
Acting Director, Superfund Division
U.S. Environmental Protection Agency
Region 7

10/28/03
Date

NOV 04 2003

EFFECTIVE DATE: _____

Burlington Northern and Santa Fe
Railway Company

By: [Signature]
(Signature)
Print Name JOHN M M9 DONOVAN
Title MGR ENVIR PERMITS

9/30/2003
Date

APPROVED AS TO FORM
[Signature]
SENIOR GENERAL ATTORNEY

In The Matter of Chemical Commodities Inc. Site
Administrative Order On Consent For Removal Action
Docket No. CERCLA-07-2003-0036



Barbara L. Peterson
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

10-23-03

Date

IN THE MATTER OF Chemical Commodities, Inc. Site
Docket No. CERCLA-07-2003-0036

CERTIFICATE OF SERVICE

I certify that the foregoing Administrative Order on Consent for Removal Action in this matter was sent this day in the following manner to the addressees:

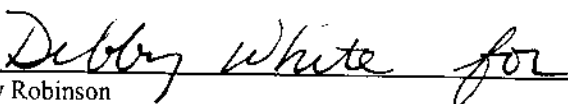
Copy hand delivered to
Attorney for Complainant:

Barbara Peterson
Senior Associate Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by First Class Mail Return Receipt:

Thomas Ryan
Lathrop & Gage L.C.
2345 Grand, Suite 2800
Kansas City, MO 64108-2684

Dated: October 29, 2003


Kathy Robinson
Regional Hearing Clerk



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

APR 16 2003

ACTION MEMORANDUM

SUBJECT: Request for a Ceiling Increase and Change in the Scope of Response at the Chemical Commodities, Inc. Site, Olathe, Johnson County, Kansas

FROM: Mary Peterson, Remedial Project Manager *Mary P. Peterson*
Iowa/Nebraska Remedial Branch

THRU: Glenn Curtis, Chief *Glenn Curtis*
Iowa/Nebraska Remedial Branch

Scott Hayes, Acting Chief *Scott Hayes*
Emergency Response and Removal Branch

TO: Andrea Jirka, Acting Director
-- Superfund Division

SITE ID#: 07L3
CERCLIS ID#: KSD031349624
NATIONALLY SIGNIFICANT: No
CATEGORY OF REMOVAL: Time-critical

I. PURPOSE

The purpose of this memo is to request a ceiling increase and a change in the scope of response for planned actions at the Chemical Commodities, Inc. Site in Olathe, Kansas. This request authorizes funding for the planned actions and expands the scope of the December 18, 2002, Action Memorandum to include closure of the groundwater interceptor trench.

II. SITE CONDITIONS AND BACKGROUND

Details regarding site conditions and background are provided in the December 18, 2002, Action Memorandum, attached for reference. The scope of that action memorandum included removal of an onsite soil pile and demolition of a dilapidated onsite building. This section will focus on information pertinent to closure of the interceptor trench, and changes that have occurred since the December 18, 2002, Action Memorandum.

During its initial response actions at the site, the U.S. Environmental Protection Agency (EPA) installed a groundwater interceptor trench and treatment system to capture and treat groundwater containing high concentrations of chlorinated solvents. The trench was specifically designed to collect dense non-aqueous phase liquids (DNAPLs) which had been found in the northeast corner of the site. The trench and treatment system were installed in 1991. A site map showing the location of the trench is attached.

In 1998 a group of potentially responsible parties (PRPs), pursuant to a consent order, dismantled the treatment system and took over the operation of the trench. Under that order, which remains in effect, the PRPs continue to operate the trench, draining it every six months and treating the water in temporary carbon drums prior to discharging the water to the sanitary sewer. Under the order, the PRPs are obligated to operate the trench until such time as the trench is decommissioned or the groundwater remedy is implemented.

Over the past several years, the volume of water collected in the trench has diminished. Possible reasons for the diminished volume include low rainfall amounts and plugging of the gravel with formation sediments. DNAPL has recently been detected in the northeast corner of the site, and several wells in the vicinity of the trench continue to exhibit very high concentrations of chlorinated solvents. A sample of water recently collected from the trench contained chlorinated solvents at a much lower concentration than that found in surrounding wells. This data indicates that the trench is not capturing the most contaminated groundwater as it was intended to do.

The EPA was recently notified by a consultant working for the Burlington Northern Santa Fe Railway Company (the railroad) that the railroad is planning to elevate the tracks that run just east of the CCI site. The project will cause the new elevated tracks to be constructed over a large portion of the interceptor trench, which is on the railroad's right-of-way property. The railroad's project will cover the manhole through which the PRPs access and drain the trench.

If the trench remains in place and the railroad constructs the new tracks as planned, the trench will continue to collect water, but the trench will not be able to be drained. If the trench is allowed to fill with water, it will induce a hydraulic head which could have the effect of pushing contaminated groundwater farther off site. It would take an estimated 1-2 years for the trench to fill with water.

In light of recent data suggesting that the trench is not achieving its intended objective and considering the railroad's plans to expand their tracks, the trench should be closed in order to avoid inducing a hydraulic head on the groundwater below the site.

The soil pile and building response action has not yet begun.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY OR REGULATORY AUTHORITIES

All of the threats described in the December 18, 2002, Action Memorandum remain valid. In addition to those, the primary threat associated with the interceptor trench is the threat to human health and the environment posed by the impact of an increased hydraulic head on the groundwater below the site if the trench is allowed to fill with water. An increased hydraulic head could push the groundwater contaminant plume farther off site beneath the residential neighborhood. Air samples collected from residences near the site have already demonstrated an impact from the contaminated groundwater due to vapor intrusion of volatile contaminants into homes. An increased hydraulic head could expand the area of impact due to vapor intrusion.

IV. PROPOSED ACTIONS AND ESTIMATED COSTS

1. Proposed Action Description

The proposed action for decommissioning the trench includes the injection of grout into the trench. The trench was constructed by placing a perforated pipe into a groove notched into the bedrock at a depth of about 20 feet below ground surface. Approximately 17 feet of coarse gravel was placed on top of the pipe, and the gravel was covered with 3-4 feet of soil. Trench design details are provided as an attachment.

The proposed action would involve injecting grout into the gravel layer, closing up the void spaces so as not to allow water to accumulate. It is believed that grout injection may be accomplished without removing the 3-4 foot soil layer atop the gravel. The perforated pipe would remain at the bottom of the trench.

Following removal of the on-site soil pile and building, and closure of the trench, the site security fence and locked gate will be maintained as part of the post removal site control. In recent years, the site fence has been vandalized periodically, apparently to gain access to the building. Fence maintenance is necessary to ensure that access to the site remains restricted to protect trespassers from exposures to surface soils which remain contaminated and to protect the onsite monitoring wells. Fence maintenance would include inspections conducted every six months and fence repairs to address security breaches. Inspections of the fence should be conducted every spring and fall. Post removal site control should continue until the onsite remedial actions are underway.

2. Description of Alternative Technologies

An alternative action for closure of the trench includes excavating the soil, gravel, and perforated pipe. These materials would need to be transported off site for disposal,

and the trench would need to be backfilled with clean soil. This alternative would be substantially higher in cost than the proposed action, would take longer to complete, and would increase exposures to site workers and area residents.

3. Contribution to Remedial Performance

The proposed action is consistent with future anticipated remedial actions. In fact, decommissioning of the trench would likely have been a component of the final site remedy.

4. Applicable or Relevant and Appropriate Requirements

Federal

The National Contingency Plan (NCP) requires that removal actions shall, to the extent practicable, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental, state environmental, or facility-siting laws. The following ARARs have been identified for the proposed action:

- a. Site worker safety requirements found at 29 C.F.R. Section 1910.120
- b. Decontaminating equipment used during the removal action requirements found at 40 C.F.R. Section 264.114

State

By letter dated March 21, 2003, a request for state ARARs was sent to the Kansas Department of Health and Environment (KDHE). Potential ARARs received from KDHE will be considered in accordance with 40 C.F.R. Section 300.400(g).

5. Project Schedule

The proposed action for trench closure is estimated to take about two weeks to complete. If completed in conjunction with the removal of the onsite soil pile and building, the entire project would take approximately 4-6 weeks to complete. A detailed project schedule will be developed as part of the design/construction work plan.

6. Estimated Costs

The project budget shown in Section V provides for the removal of the on-site soil pile and building as approved in the December 18, 2002, Action Memorandum, as well as closure of the interceptor trench and fence maintenance. The costs presented assume that a portion of the soil pile material is hazardous waste and that the building debris will be non-

hazardous waste. The estimate also assumes that fence maintenance would not extend beyond the two-year time frame for removal actions. A detailed cost estimate is attached for reference.

Extramural Costs

Regional Removal Allowance Costs

ERRS Cleanup Contractor Costs w/ 20% contingency	\$377,000
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Other Extramural Costs Not Funded from the Regional Allowance

START	\$ 51,600
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Subtotal, Extramural Costs	\$428,600
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Extramural Cost Contingency (20%)	\$ 85,700
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TOTAL, REMOVAL PROJECT CEILING	\$514,300
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The EPA direct and indirect costs, although cost recoverable, do not count toward the total removal action. Refer to the Enforcement Section for a breakout of these costs.

V. ENFORCEMENT

An Enforcement Addendum has been prepared and is attached for reference. For NCP consistency purposes, it is not a part of this Action Memorandum.

It is expected that the removal of the onsite soil pile and building will be conducted as a fund-lead response. However, one or more of the PRPs will be offered the opportunity to conduct the closure of the groundwater interceptor trench. If the party or parties decline to conduct the action or a consent order cannot be negotiated in a prompt manner, then the trench closure activity will also be conducted as a fund-lead response.

The section below provides EPA's total estimated project related costs including intramural costs that will be eligible for cost recovery. The total EPA costs for this removal action based on full cost accounting practices that will be eligible for cost recovery are estimated to be \$849,000.

Direct Intramural Costs	\$ 28,800
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Total Direct Costs (Extramural and Intramural)	\$543,100
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Indirect Costs (Direct costs x Regional Indirect Rate (56.29%))	\$305,700
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Total Estimated EPA Cost of Removal Action	\$849,000
---	------------------

Direct costs include direct extramural costs and direct intramural costs. Indirect costs are calculated based on an estimated indirect rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2000. These estimates do not include pre-judgement interest, do not take into account other enforcement costs, including the Department of Justice costs, and may be adjusted during the course of the removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of the actual costs from this estimate will affect the United States' right to cost recovery.

VI. RECOMMENDATION

Conditions at the site continue to meet the NCP Section 300.415(b)(2) criteria for a removal action, and I recommend your approval of the proposed actions as a change in scope of the previously approved December 18, 2002, Action Memorandum. The total removal project ceiling if approved will be \$514,300. Of this, an estimated \$377,000 comes from the Regional removal allowance.

Approved:


Andrea Jirka, Acting Director
Superfund Division

4/16/03
Date

Attachments



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

Working
5

ACTION MEMORANDUM

DATE: 18 Dec 02

SUBJECT: Request for Removal Action at the Chemical Commodities Site
Olathe, Johnson County, Kansas

FROM: Mary Peterson, Remedial Project Manager *Mary Peterson*
Iowa/Nebraska Remedial Branch

THRU: Glenn Curtis, Chief *Glenn Curtis*
Iowa/Nebraska Remedial Branch

Robert W. Jackson, Chief
Emergency Response and Removal Branch

TO: Michael J. Sanderson, Director
Superfund Division

SITE ID#: 07L3
CERCLIS ID#: KSD031349624
NATIONALLY SIGNIFICANT: No
CATEGORY OF REMOVAL: Time-critical

I. PURPOSE

The purpose of this action memorandum is to request and document approval of the proposed removal action for the Chemical Commodities Inc., site, Olathe, Kansas (the "site"). The general objectives of the action are to reduce potential exposures to contaminated soil and minimize the off-site migration of contaminants in the future by removing on-site, stock-piled soil remaining from a previous Superfund removal action at the site.

II. SITE CONDITIONS AND BACKGROUND

A. Site Description

1. Removal Site Evaluation

Chemical Commodities, Inc. (CCI) operated a chemical brokerage business at this site from 1951 to 1989. The company engaged in the resale of surplus, off-spec, and recycled chemicals. A variety of chemicals in a variety of containers were stored in sheds and trailers throughout the site and in a main, 50,000-square-foot, warehouse.

The Environmental Protection Agency (EPA) completed a removal assessment at CCI in March 1989. Several hazardous conditions were identified from the assessment, including incompatible chemicals stored together, extensive leakage from numerous containers, unlabeled containers of chemicals, and many deteriorated containers. Chemical contaminants, primarily chlorinated solvents were detected in soils and groundwater on site and immediately off site. Contamination of soil and groundwater resulted from numerous chemical spills from poorly maintained containers housed in inadequate storage facilities. Subsequently, EPA initiated a fund-lead, time-critical removal action in July 1989 to address surface soil contamination, shallow subsurface contamination, and the threat of additional chemical releases.

The EPA removal action was conducted in three phases. Phase I consisted of the assessment and inventorying of the chemicals remaining on site. Phase II covered the packaging, transportation, and disposal of the chemicals; and Phase III consisted of the demolition of some on-site structures, decontamination of the warehouse building, surface soil excavation and disposal, and subsurface remediation. Phase III also included the removal of about 300 tons of contaminated soil and the on-site stockpiling of an additional 1,200 tons of contaminated soil. Subsurface contamination, specifically dense non-aqueous phase liquids detected during the site assessment, was addressed by installing an interceptor trench for collecting shallow groundwater and treating it with an on-site air stripper apparatus. These removal actions were concluded in 1991, but the interceptor trench and treatment system continued to operate beyond that time. In 1998, a group of potentially responsible parties (PRPs) agreed to conduct a removal action to dismantle the treatment system. As part of that agreement, the PRPs continue to operate the interceptor trench, draining it every six months and treating the water in temporary carbon drums prior to discharging it to the sanitary sewer.

2. Physical Location

CCI is located on 1.5 acres within the city limits of Olathe, Kansas. The site is bordered on the west and north by single-family residences, on the east by rail tracks, and on the south by vacant property. The CCI property is currently zoned as industrial, but the city's

master plan shows the site as residential. Several homes are located adjacent to the north of the site and just across the street to the west. The street address for the site is 300-320 South Blake Street, Olathe, Kansas. Attachment 1 is a site location map.

3. Site Characteristics

The site is characterized by a soil pile containing contaminated soils excavated during the 1989-1991 removal action, a severely dilapidated warehouse building, and contaminated subsurface soils and groundwater containing high levels of volatile organic compounds (VOCs). During the 1989-1991 removal action, approximately 300 tons of highly contaminated soil were excavated and transported off site for incineration and disposal. However, because of budgetary constraints which limited the scope of the clean-up actions, an additional 1,200 cubic yards of moderately contaminated soils were excavated and consolidated with debris from dismantled storage structures (that exceeded the Resource Conservation and Recovery Act [RCRA] regulatory Toxicity Characteristic Leaching Procedure [TCLP] limit for chromium) in a 60-foot by 80-foot plot located next to the main warehouse building. The consolidated soil and debris pile was covered with PVC sheeting (40 mil), 2 feet of clean soil, and was vegetated.

In recent years, the main warehouse building has fallen into a severe state of disrepair. The roof has collapsed in spots, large cracks have appeared in the sidewalls, the brick walls have begun to visibly sag, and vandals have broken doors and knocked large holes in the walls to gain entry to the building. Presently, the main warehouse building is considered structurally unsound; and the close proximity to the stockpiled soil which abuts the building poses a safety hazard to any workers on or near the soil pile.

A site characterization study conducted in the mid 1990s showed high levels of various compounds in site subsurface soils, as well as high levels of VOCs, primarily chlorinated solvents, in on-site groundwater. An ongoing remedial investigation/feasibility study (RI/FS) has documented that the groundwater contamination has migrated a distance of at least 1,000 feet from the site to the west, beneath a residential area. Groundwater at the site is shallow, with bedrock located about 18 feet below ground. Soils are tightly compacted clays.

Area residents are all connected to the city water supply, which draws its water from Lake Olathe several miles from the site. While there are no known users of private wells in the immediate vicinity of the site, there are currently no restrictions on the installation or use of private wells in the area. Private wells have historically been used in the area, and several wells remain in use within four miles of the site.

4. Release or Threatened Release into the Environment of a Hazardous Substance, or Pollutant, or Contaminant

Arsenic, chromium, mercury, polyaromatic hydrocarbons (PAHs), pesticides, VOCs including dichloroethylene (DCE), tetrachloroethylene (PCE), and trichloroethylene (TCE) are among a number of compounds detected in stockpiled soil at the site, as documented by the site characterization study conducted by the PRPs in the mid 1990s. These compounds are listed as hazardous substances pursuant to 40 C.F.R. § 302.4. As such, they are "hazardous substances" as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 (14).

5. NPL Status

The site was listed on the National Priorities List (NPL) in 1994.

6. Maps, Pictures, and other Graphic Representations

A site location map is included as Attachment 1. Photographs of the site illustrating the deteriorated condition of the main building and its proximity to the stockpiled soil are included as Attachment 2.

B. Other Actions to Date

1. Previous Actions

Previous actions are summarized in paragraph II.A.

2. Current Actions

The 1998 PRP removal action continues to be conducted by the PRPs. The trench is drained every six months and water from the trench is treated in carbon filters before being discharged to the sanitary sewer.

Additional indoor air sampling is being conducted to assess the impacts to homes from vapor intrusion. Also, the PRPs are completing the Baseline Risk Assessment and are planning to conduct a bedrock groundwater investigation as part of the ongoing RI/FS.

C. State and Local Authorities' Roles

1. State and Local Actions to Date

The Kansas Department of Health and Environment (KDHE) participates in a review capacity in all aspects of site investigations and clean up. The KDHE personnel are often on site during field activities and provide comments on technical documents.

The city of Olathe has participated in site activities dating back to the period when CCI operated at the site. The city responded to numerous fires and explosions at the site and to complaints from area residents. In more recent years, the city has provided some security oversight by inspecting the fence and building and also reviewed and approved permits for the discharge of treated groundwater to the sanitary sewer. The city regularly attends community meetings and has attempted to inform the real estate community regarding site conditions.

2. Potential for Continued State/Local Response

The KDHE will continue to participate in the RI/FS and will review and comment on EPA's proposed alternatives for the final site remedy.

It is likely that the city will continue to be involved at the site, particularly in actions relating to the building and soil pile. The city continues to evaluate its authorities to address the building. The city will also be involved in determinations regarding future land use of the CCI property.

III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, AND STATUTORY AND REGULATORY AUTHORITIES

The site conditions pose a significant threat to public health and welfare which meet the criteria for response action under 40 C.F.R. § 300.415(b)(2) of the National Contingency Plan (NCP), which are described as follows.

1. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants, or contaminants [40 C.F.R. § 300.415(b)(2)(i)].

Arsenic, chromium, mercury, PAHs, pesticides, and VOCs are present in the stockpiled soil above health-based levels. If budgetary constraints had not prevented it, the stockpiled soil would have been hauled off site and properly disposed of during the 1991 removal. The soil stockpile was designed only as a short-term containment and stabilization action until such time as the long-term site clean-up plans were developed and implemented. However, it has been ten years since the soil was initially stockpiled, and a final remedial action has not been selected nor is any remedial action scheduled. Ten years after its construction, the

pile is showing signs of wear and degradation. A recent site visit revealed that the pile appears to have "slumped" into the side of the building. In addition, erosion of the pile has occurred in certain places and the PVC sheeting is exposed and is visibly degrading. Root growth from trees now growing on the soil pile will further compromise the integrity of the PVC sheeting. Contact between the pile and the building further threatens the structural integrity of the building. Also, the proximity of the pile and building will complicate any effort to remove or relocate the pile.

Though site security measures were initiated during the removal actions in 1991, vandals have repeatedly gained entry to the site by breaking locks or breaching the perimeter security fence as well as the barricaded warehouse. Incidents of vandalism at the site have become a public nuisance for the local fire and police departments and a reason for concern to the adjoining residential community.

Finally, the exclusion of animals or the "food chain" to the site is nearly impossible; the impacts to these are uncertain, but represent potential exposure.

2. High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate [40 C.F.R. § 300.415(b)(2)(iv)].

High levels of arsenic, chromium, mercury, PAHs, pesticides, and VOCs present in the stockpiled soil will continue to migrate into the underlying aquifer, and possibly off site, as the integrity of the stockpile degrades due to weathering. High levels of VOCs have been detected in the groundwater 1,000 feet to the west of the site beneath a residential area. While the soil pile is not believed to be a significant source of the groundwater contamination, it may be a contributing factor.

B. Threats to the Environment

1. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released [40 C.F.R. § 300.415(b)(2)(v)].

Precipitation events can be expected to contribute to future releases of contaminants from the soil pile. Heavy rains may erode the protective cover on the soil pile and carry contaminated soil off site by surface water runoff. Also, substantial rainfall events can increase the hydraulic head at the site, exacerbating the effect of contaminant migration and transport in groundwater.

IV. PROPOSED ACTIONS AND ESTIMATED COSTS

A. Proposed Actions

1. Proposed Action Description

a. Contaminated Soil

The proposed action for the stockpiled contaminated soil is excavation and off-site disposal at a Subtitle D Landfill. Soil will be excavated to a depth of one foot below the surrounding ground surface. The excavated area will be backfilled with clean soil and vegetated. It is estimated that approximately 1,200 tons of soil will be removed.

b. Building Demolition

To safely conduct the necessary excavation operations around the contaminated soil pile, the main warehouse building must be demolished and removed from the area. According to the Occupational Safety and Health Act (OSHA) standard 1926.651 (i)(1) whenever the stability of adjoining buildings, walls, or other structures is endangered by excavation operations, the building/structure must be shored up or removed to ensure the protection of employees. Exterior shoring of the building is not practical in this instance because the soil pile literally abuts the building which leaves insufficient space to adequately anchor exterior braces in a cost-effective manner. Interior bracing is not feasible because the structural instability of the building makes any work inside the building unsafe for workers. In addition, because the dilapidated condition of the building makes future rehabilitation of the building unfeasible, any attempt to shore up the building for the purpose of saving the building for future reuse would not be cost effective. In conclusion, the most cost-effective solution for eliminating the safety hazard posed by the building in accordance with OSHA requirements is building demolition.

The building demolition debris will be disposed of as a "special waste" in a permitted landfill. The amount of building debris to be removed is estimated at 1,000 tons. The concrete slab building foundation will remain in place so as not to expose underlying contaminated soils. The concrete slab may also be useful during implementation of the final site remedy.

Dust suppression methods will be employed as needed during soil excavation and building demolition in order to minimize fugitive dust emissions from the site to the surrounding neighborhood. Ambient air monitoring around the site perimeter will be conducted during the removal action.

c. Clean-up Goals

Chemical-specific clean-up goals have not been established for this action. Rather, the soil pile will be excavated to a depth of one foot below the existing ground surface of the surrounding area. The excavated area will be backfilled with clean soil and vegetated. This approach is consistent with the surface soil removal actions conducted in 1990. Subsurface soil contamination will be addressed in the final remedial action for the site.

2. Contribution to Remedial Performance

This action is consistent with future anticipated remedial actions. While remedial actions have not yet been selected for the site, such actions will likely include source soil removal or treatment, and groundwater remediation. Removal of the soil pile is clearly consistent with source soil removal. In addition, removal of the building will allow for site workers to safely conduct excavation and drilling operations which are likely to be required in order to implement the remedial actions.

3. Description of Alternative Technologies

Removal action alternatives evaluated for the stockpiled soil included No Further Action and Excavation and Off-Site Disposal.

4. Engineering Evaluation/Cost Analysis

Since current exposures are likely due to unrestricted access and reports of trespassers on the site, the proposed action will be undertaken as a Time-Critical Removal Action. An Engineering Evaluation/Cost Analysis (EE/CA) was not completed for this action.

5. Applicable or Relevant and Appropriate Requirements (ARARS)

The NCP, §300.415, provides that removal actions shall, to the extent practicable considering the exigencies of the situation, attain ARARs under federal environmental, state environmental, or facility-citing laws.

The following are federal ARARs identified for this action.

a) Off-site shipments of hazardous waste will need to meet the manifesting requirements found at 40 C.F.R. Sections 262.20 - 262.23.

b) Pre-transport requirements found at 40 C.F.R. 262.30.

c) Packaging, labeling, and marking requirements found at 40 C.F.R. Sections 262.30 - 262.32.

d) Site worker safety requirements found at 29 C.F.R. Section 1910.120.

e) Preparing RCRA hazardous waste for off-site transportation and disposal requirements found at 40 C.F.R. 260-268.

f) Decontaminating equipment used during the removal action requirements found at 40 C.F.R. 264.114.

The KDHE provided a list of state requirements it believed may be ARARs for this action. After reviewing the list provided by KDHE, EPA has determined that the following state requirements are ARARs for this action:

a. Ambient Air Quality Standards and Air Pollution Control Requirements found at K.A.R. 28-19. These requirements provide emission standards for listed hazardous air pollutants and state air quality standards to protect the public health. These requirements will be relevant and appropriate if the action results in threshold emissions of any listed pollutants.

b. Solid Waste Management Regulations found at K.A.R. 28-29. These regulations apply to actions involving the removal of solid waste and are therefore applicable to this action. The regulations provide requirements for storage, transportation, and treatment.

c. Hazardous Waste Management Regulations found at K.A.R. 28-31. These regulations provide requirements for the storage, transportation, and treatment of hazardous waste, and will be applicable for any hazardous wastes removed from the site.

d. Emergency Planning and Right-To-Know found at K.A.R. 28-65. This rule provides for emergency planning and informing the community when hazardous substances or chemicals are present on site. This rule will be applicable if the soils or building materials are hazardous substances.

6. Project Schedule

Primary on-site activities are estimated to take one month to complete; a detailed schedule will be developed in a design/construction work plan.

B. Estimated Costs

The estimated cost of removing the soil pile ranges from \$60,000 to \$350,000 depending on whether the soil is characterized as hazardous waste. The estimated cost of

building demolition is \$145,000. A detailed cost estimate is included as Attachment 3. Some or all of the proposed actions may be performed by PRPs pursuant to an administrative consent order.

VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

Delayed action will result in increased public health and environmental risks, discussed in paragraph III above. Specifically, current exposures to contaminated soil are likely to continue if action is delayed because access to the site is currently unrestricted. The PRP has indicated that the degree of vandalism to the fence and building in recent months is beyond its willingness to address. Also, local residents have reported that children have been seen playing on the site. Trespassers to the site could be exposed to contaminated soil through direct contact by climbing on the pile or digging in it, inhalation due to windblown soil particles and incidental ingestion. Further, the local community group has voiced intense concern regarding the soil pile and the building, and have raised the awareness of the news media and local Congressional offices. Delayed action will likely result in increased scrutiny by the media and pressure from Congressional offices.

The contaminated soil may also be contributing to groundwater contamination and may migrate off site by surface water runoff. Delayed action could result in off-site discharges that could threaten human health, wildlife, or the ecosystem.

VII. OUTSTANDING POLICY ISSUES

None.

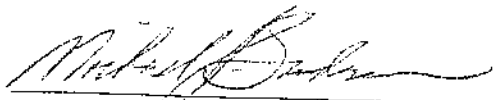
VIII. ENFORCEMENT

See Attachment 4 for an enforcement summary.

IX. RECOMMENDATION

This decision document represents the selected removal action for the Chemical Commodities Inc., site, Olathe, Kansas, developed in accordance with CERCLA as amended, and not inconsistent with the NCP. The decision is based upon the administrative record for the site.

Conditions at the site meet the criteria set forth at 40 C.F.R. Section 300.415(b)(2) for a removal action, and I recommend your approval of the proposed removal action.

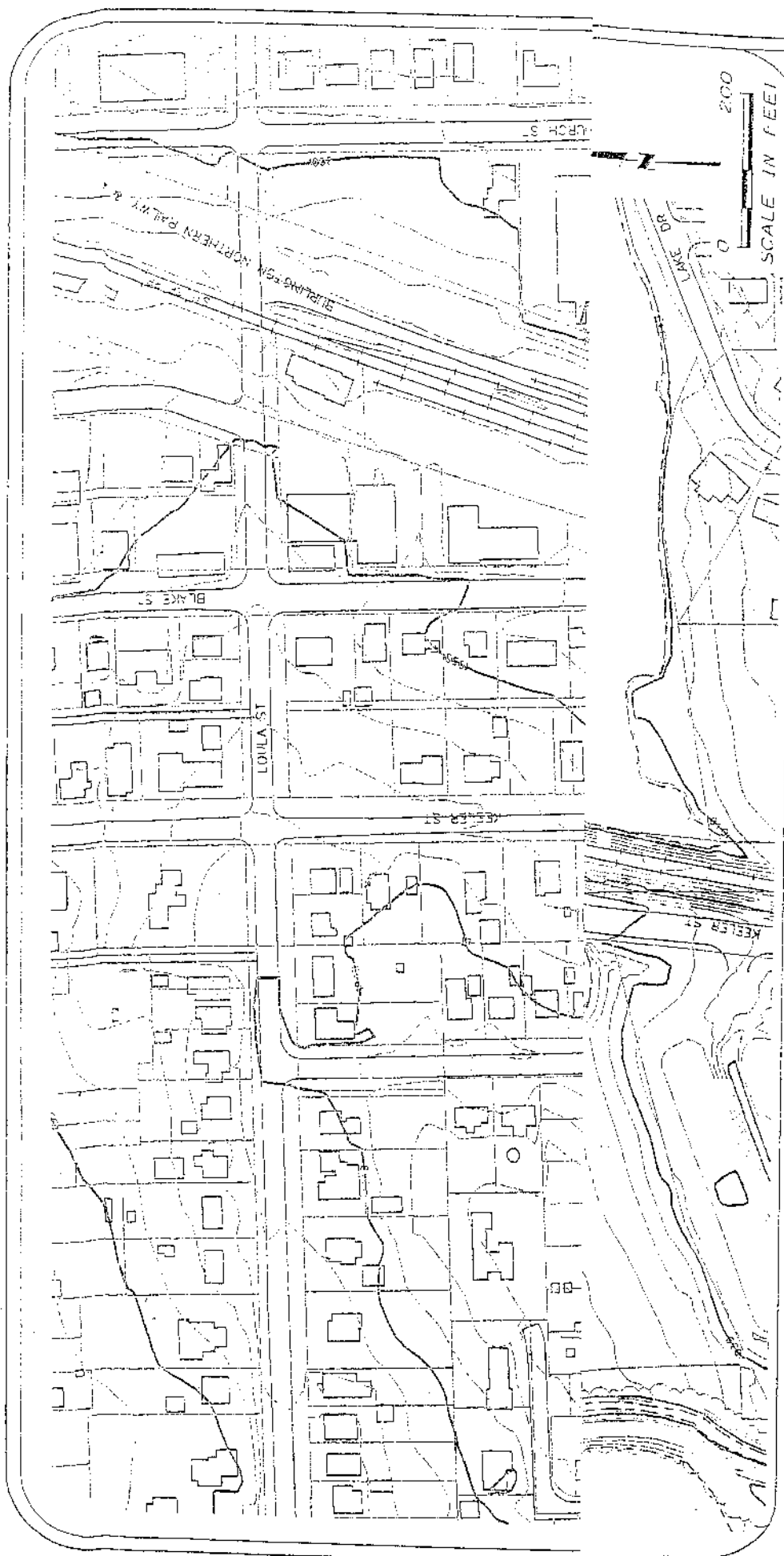


Michael J. Sanderson, Director
Superfund Division

12-18-02

Date

Attachments



Attachment I
CHEMICAL COMMODITIES, INC.
OLATHE, KANSAS
SITE VICINITY MAP

Attachment 2

Mary Peterson

10/10/02 02:44 PM

To: Pamela Samek/SUPR/R7/USEPA/US@EPA

cc:

Subject: CCI Soil Pile Liner

Can you print out the attachment on the color printer, please? Thanks. Print out 3 copies. Thanks.

----- Forwarded by Mary Peterson/SUPR/R7/USEPA/US on 10/10/2002 02:43 PM -----

Paul Doherty

10/07/2002 08:38 AM

To: Mary Peterson/SUPR/R7/USEPA/US@EPA

cc: curtis.glenn@epa.gov, Barbara Peterson/CNSL/R7/USEPA/US@EPA,
David Cozad/CNSL/R7/USEPA/US@EPA

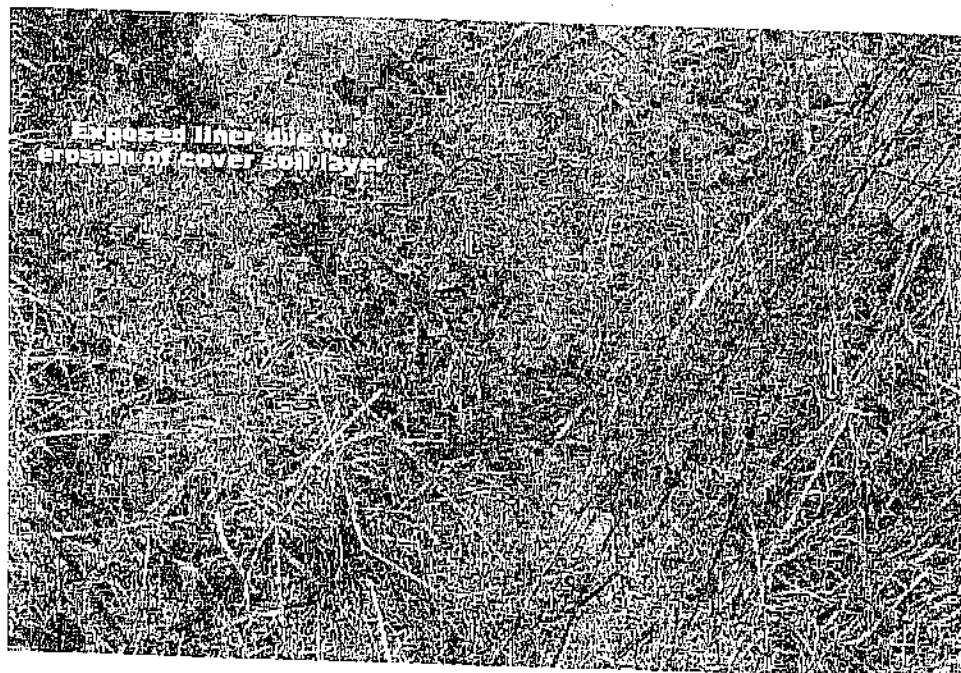
Subject: CCI Soil Pile Liner

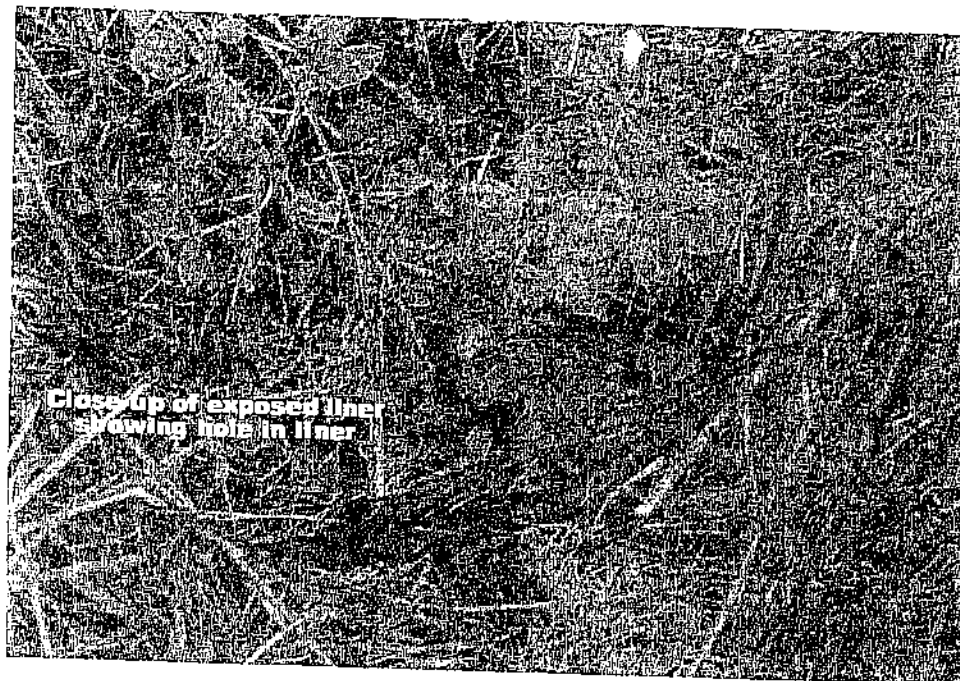
On October 3, 2002, I inspected the CCI contaminated soil stockpile and documented the following conditions:

1. Erosion has exposed areas of the liner
2. Holes are evident in areas of the exposed liner
3. Root growth from trees which have become established on the liner will eventually penetrate and compromise the liner

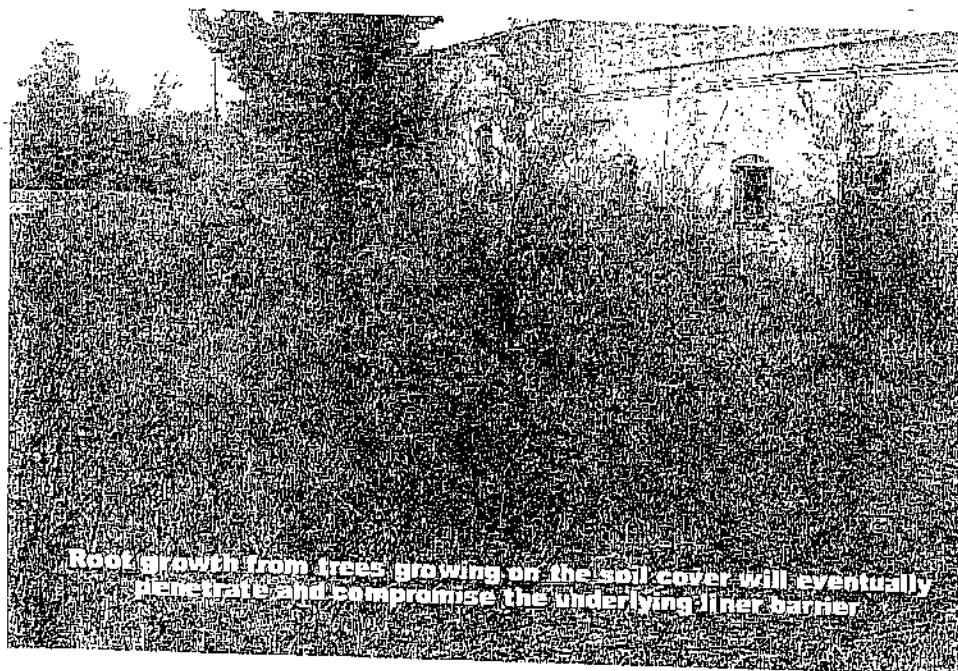
The stockpiled soil should be removed as soon as possible and disposed of properly. The building adjacent to the stockpile needs to be demolished in order to perform the work in a safe manner in accordance with OSHA guidance.

ped





Close-up of exposed liner
showing hole in liner



Root growth from trees growing on the soil cover will eventually
penetrate and compromise the underlying liner barrier

Mary Peterson

10/17/02 09:21 AM

To: Pamela Samek/SUPR/R7/USEPA/US@EPA

cc:

Subject: Re: CCI Soil Pile/building removal

Please print 4 copies on the color printer. Thanks.

----- Forwarded by Mary Peterson/SUPR/R7/USEPA/US on 10/17/2002 09:20 AM -----

Paul Doherty

10/16/2002 05:02 PM

To: Mary Peterson/SUPR/R7/USEPA/US@EPA

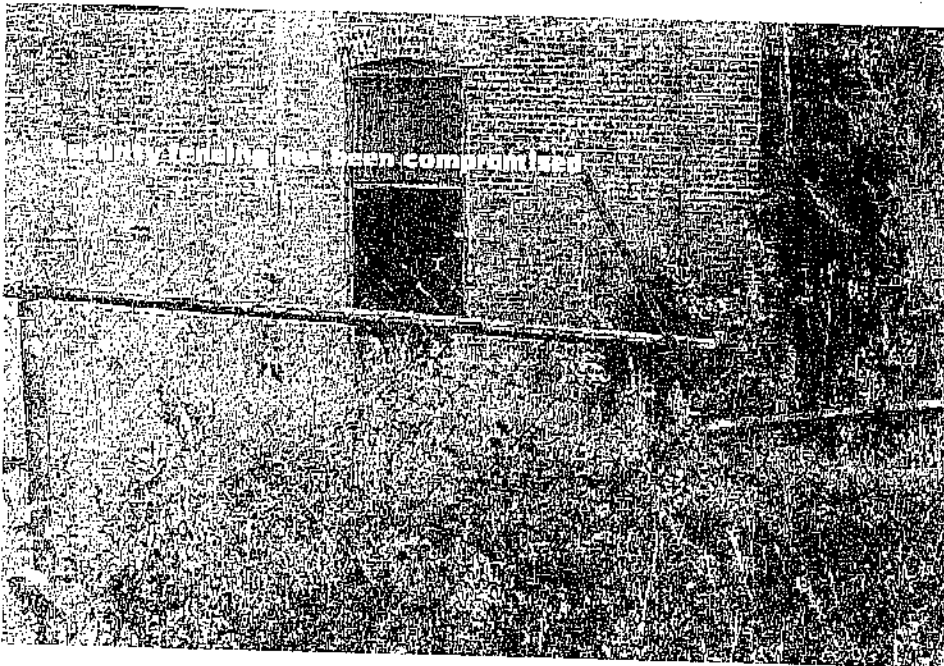
cc:

Subject: Re: CCI Soil Pile/building removal

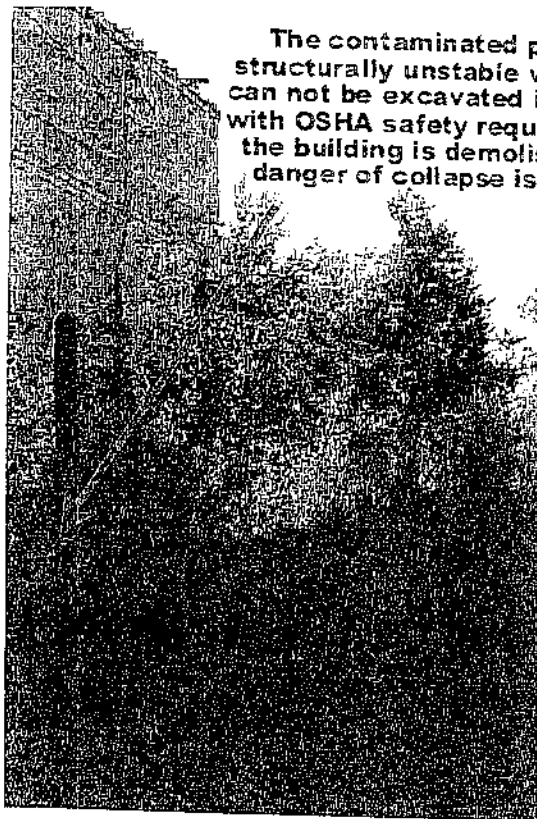
Mary:

I put the CCI photos on G:/user/share/ped/photos/CCI. Here's a few with observations noted.

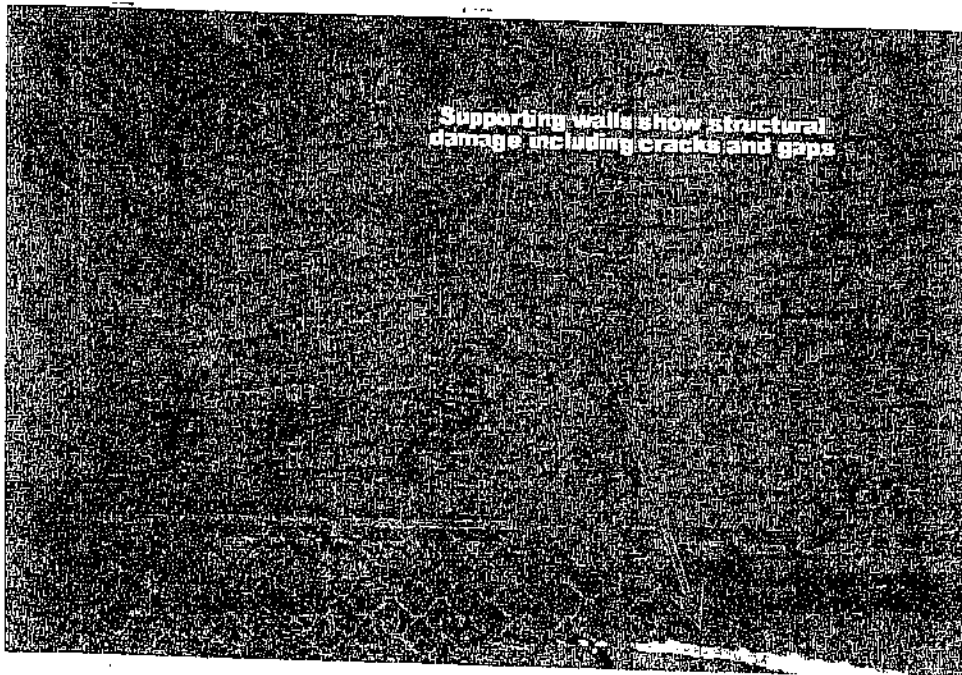
ped

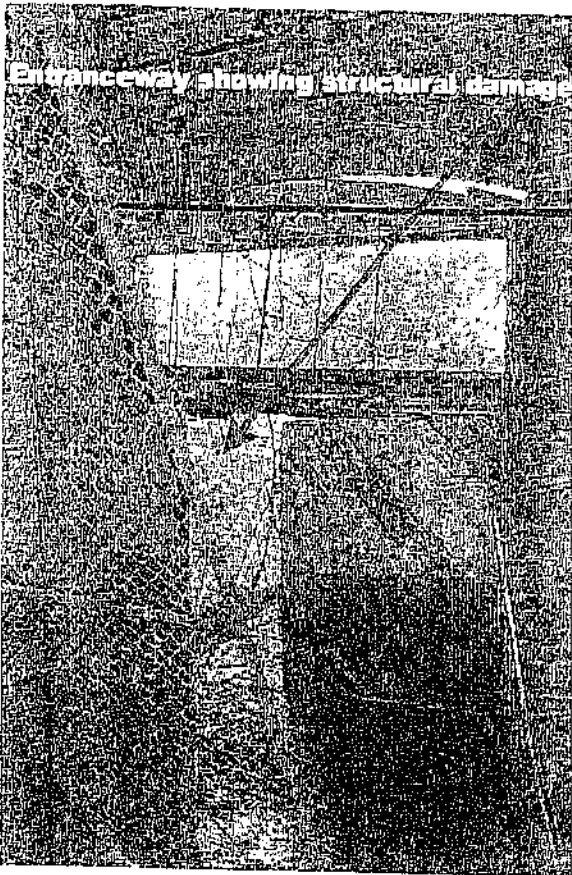


The contaminated pile abuts a structurally unstable wall. The pile can not be excavated in accordance with OSHA safety requirements until the building is demolished and the danger of collapse is eliminated.

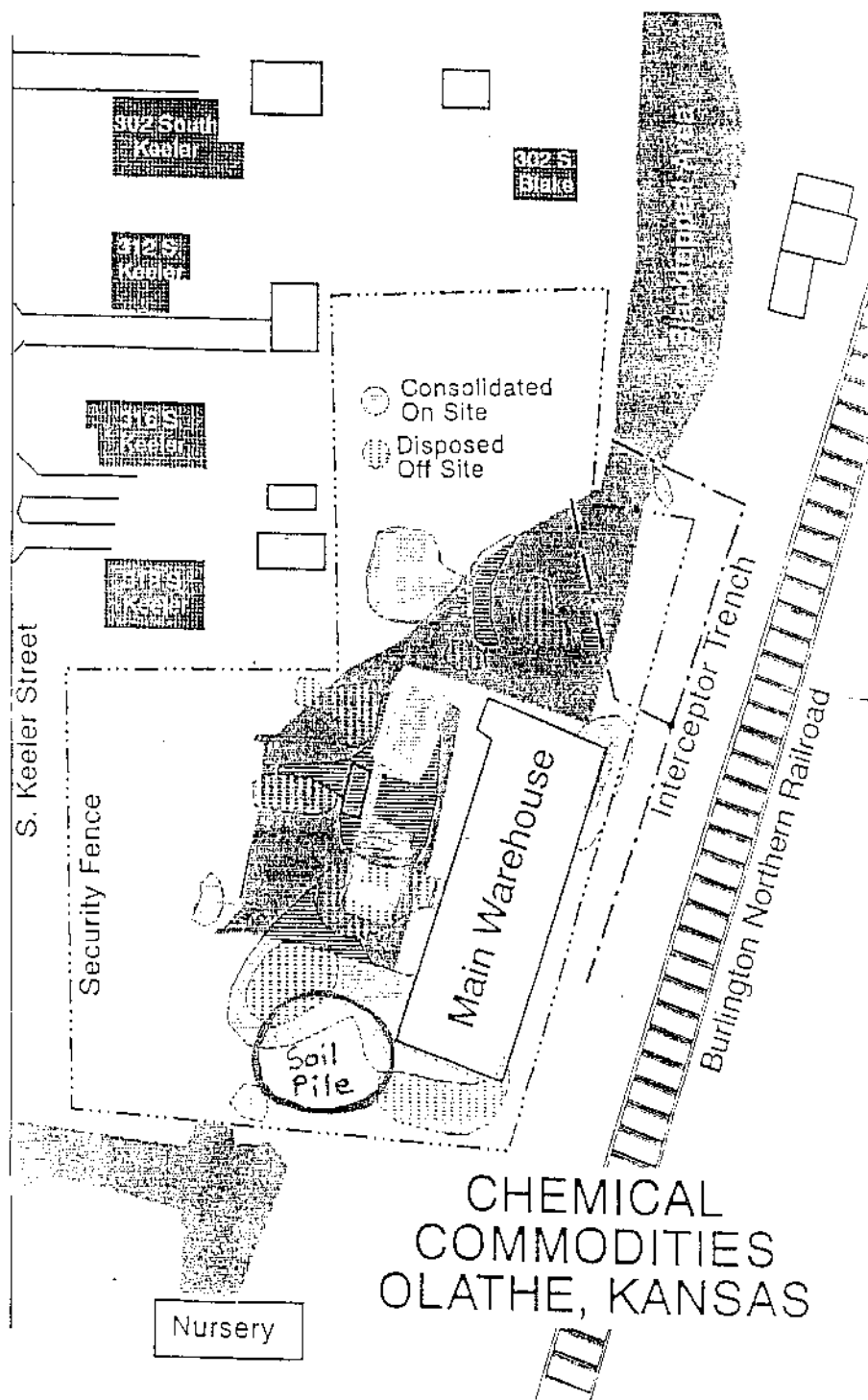


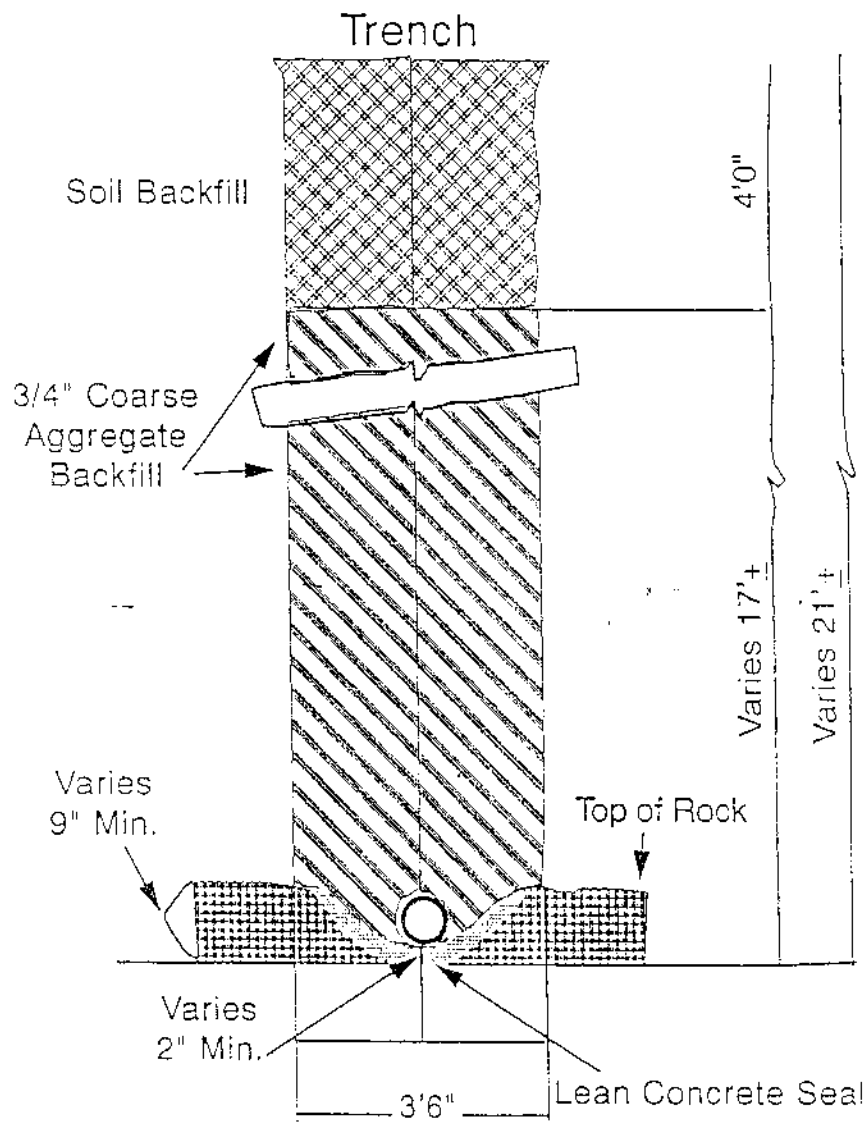
Supporting walls show structural damage including cracks and gaps





CCI SITE MAP





Typical Trench Section

Summary of Proposed Costs in Action Memo Format

Section V.B. Estimated Costs

Extramural Costs:

Regional Removal Allowance Costs:

Total ERRS Cleanup Contractor Costs w/ 20% contingency	\$377,000
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Other Extramural Costs Not Funded from the Regional Allowance

START	\$51,600
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Subtotal, Extramural Costs	\$428,600
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Extramural Costs Contingency (20%)	\$85,700
------------------------------------	----------

TOTAL, REMOVAL ACTION PROJECT CEILING	\$514,300
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Section VIII. Enforcement

This section of the Action Memo provides EPA's total estimated project related costs including intramural costs that will be eligible for cost recovery.

Direct Intramural Costs:

Including RPM and OSC Project Management	\$28,800
--	----------

Total Direct Costs

Direct extramural and Direct intramural	\$543,100
---	-----------

Indirect Costs

Region-specific Indirect Cost Rate (56.29%) x Direct Costs	\$305,700
--	-----------

Estimated EPA Costs for Removal Action^{1,2}

Total Direct and Indirect Costs	\$848,800
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1	<p>Include the following sentence in the enforcement section of the Action Memo:</p> <p><i>The total EPA costs for this removal action based on full-cost accounting practices that will be eligible for cost recovery are estimated to be \$848,800.</i></p>
---	---

2	<p>Include the following language as a footnote in this section:</p> <p><i>Direct costs include direct extramural costs and direct intramural costs. Indirect costs are calculated based on an estimated indirect rate expressed as a percentage of site-specific direct costs, consistent with the full cost accounting methodology effective October 2000. These estimates do not include pre-judgement interest, do not take into account other enforcement costs, including the Department of Justice costs, and may be adjusted during the course of a removal action. The estimates are for illustrative purposes only and their use is not intended to create any rights for responsible parties. Neither the lack of a total cost estimate nor deviation of the actual costs from this estimate will affect the United States right to cost recovery.</i></p>
---	---

Section IX. Recommendation

Use the following approval statement:

Conditions at the site meet the NCP section 300.415(b) criteria for a removal and I recommend your approval of the proposed removal action. The total removal action project ceiling if approved will be \$428,500. Of this, an estimated \$377,000 comes from the Regional removal allowance.

1	LABOR							
	Response Manag	1	25	10-hr days x	\$600	/day =	\$15,000	
	Field Clerk	1	25	10-hr days x	\$340	/day =	\$8,500	
	Foreman	1	20	10-hr days x	\$430	/day =	\$8,600	
	Equipment Operators	2	20	10-hr days x	\$520	/day =	\$20,800	
	Laborers	2	20	10-hr days x	\$420	/day =	\$16,800	
	Total Labor							\$69,700
2	EQUIPMENT							
	Excavator	1	20	days x	\$320	/day =	\$6,400	
	Front-end Loader	1	20	days x	\$300	/day =	\$6,000	
	Unit Loader	1	20	days x	\$120	/day =	\$2,400	
	Pickup Truck	2	25	days x	\$70	/day =	\$3,500	
	Miscellaneous	lump sum					\$3,000	
	Total Equipment							\$21,300
3	TRAVEL							
	Lodging and Meals	7	21	days x	\$125	/day =	\$18,375	\$18,375
4	MATERIAL AND SUPPLIES							
	PPE, Cutting Torches, Gas, Hoses, Plastic, Fuel, etc				lump sum		\$20,000	\$20,000
5	TRANSPORTATION & DISPOSAL							
	T&D - Bldg Debris - Non-Haz	1250		tons x	\$25	/ton =	\$31,250	
	T&D - Hazardous Soil	500		tons x	\$125	/ton =	\$62,500	
	T&D - Non-Hazardous Soil	1000		tons x	\$25	/ton =	\$25,000	\$118,750
6	SUBCONTRACTS							
	Trench Pressure Grout				lump sum		\$60,000	
	Subcontract Management				lump sum		\$6,000	
	Total Subcontracts							\$66,000
7	SUBTOTALS							
	Labor						\$69,700	
	Equipment						\$21,300	
	Travel						\$18,375	
	Materials and Supplies						\$20,000	
	Transportation and Disposal						\$118,750	
	Subcontract						\$66,000	
	Subtotal						\$314,125	
8	CONTINGENCIES (20%)							\$62,875
9	TOTAL ERRS EXTRAMURAL PROJECT COST							\$377,000

B. START PROGRAM SUPPORT CONTRACT									
SITE DOCUMENTATION, GEOPHYSICAL SURVEY, SITE SURVEY, POST-REMOVAL SITE CONTROL									
1	LABOR								
	Program Manager	1	10	hr x	\$80	/hr =	\$800		
	Geologist	1	300	hr x	\$60	/hr =	\$18,000		
	Engineer	1	40	hr x	\$60	/hr =	\$2,400		
	Environmental Specialist	2	100	hr x	\$40	/hr =	\$8,000		
	Total Labor								\$29,200
2	EQUIPMENT								
	Survey Equipment	1	5	days x	\$100	/day =	\$500		
	Geophysical Equipment	1	5	days x	\$100	/day =	\$500		
	Vehicles	2	30	days x	\$75	/day =	\$4,500		
	Miscellaneous	lump sum					\$3,000		
	Total Equipment								\$8,500
3	TRAVEL								
	Lodging and Meals								\$0
4	MATERIAL AND SUPPLIES								
	PPE, Fence Repair Hardware	lump sum					\$5,000		\$5,300
5	TRANSPORTATION & DISPOSAL								
									\$0
6	SUBCONTRACTS								
	Total Subcontracts								\$0
7	SUBTOTALS								
	Labor						\$29,200		
	Equipment						\$8,500		
	Travel						\$0		
	Materials and Supplies						\$5,300		
	Transportation and Disposal						\$0		
	Subcontract						\$0		
	Subtotal								\$43,000
8	CONTINGENCIES (20%)								\$8,600
9	TOTAL START EXTRAMURAL PROJECT COST								\$51,600
C. SUBTOTAL EXTRAMURAL CONTRACT COSTS									
	ERRS								\$377,000
	START								\$51,600
	SUBTOTAL EXTRAMURAL CONTRACT COSTS								\$428,600
II. INTRAMURAL COSTS									
1	EPA								
	Direct Labor - Loaded	1	600	hrs x	\$40	/hr =	\$24,000		
2	Intramural Contingencies								\$4,800
3	Total Intramural Costs								\$28,800
III. TOTAL PROJECT CEILING									
1	EXTRAMURAL CONTRACT COSTS								\$428,600
2	INTRAMURAL COSTS								\$28,800
3	TOTAL PROJECT COSTS								\$457,400